



**CITY COUNCIL
COMMUNITY DEVELOPMENT AGENCY
SPECIAL AND REGULAR MEETING MINUTES**

**Tuesday, November 9, 2010 at 6:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers**

6:00 P.M. CLOSED SESSION (Council Conference Room, 1st floor of City Hall)

Mayor Cline called the special meeting to order at 6:10 p.m. with all Council Members present.

1. Closed Session pursuant to Government Code Section §54957.6 to conference with legal counsel regarding existing litigation: *Town of Atherton v. CHSRA*

The Council adjourned to regular session at 6:40 p.m. and the regular session of the City Council was called to order at 7:00 with all members present.

Pledge of allegiance was led by Mayor Cline.

REPORT FROM CLOSED SESSION

There was no reportable action from Closed Session.

ANNOUNCEMENTS

- Agenda Item H1 – Request for Reconsideration of Council action from October 26th has been withdrawn and will not be heard tonight
- The City Clerk's Office is accepting applications for the Environmental Quality and Planning Commissions

A. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS – None

B. PRESENTATIONS AND PROCLAMATIONS – None

C. PUBLIC COMMENT #1 – None

D. CONSENT CALENDAR

1. Authorization of the Deputy City Manager to accept the work performed by San Jose Boiler Works, Inc. to furnish and install two new boilers and a hot water storage tank at the Burgess Gymnasium (*Staff report # 10-153*)

Action: Motion and second (Robinson/Fergusson) to approve authorization of the Deputy City Manager to accept the work performed by San Jose Boiler Works, Inc. to furnish and install two new boilers and a hot water storage tank at the Burgess Gymnasium passes unanimously.

E. PUBLIC HEARINGS

1. Consideration of an Appeal of the Planning Commission's decision to approve a Use Permit and make a determination of public convenience or necessity, in accordance

with the requirements of the State Department of Alcoholic Beverage Control (ABC), for the off-site sale of beer, wine and distilled spirits and for on-site wine tasting associated with a new retail liquor and specialty market located within an existing building located at 700 El Camino Real. The project also includes approval of architectural control for exterior modifications to the existing building and a sign permit for signage and an awning that contains the color red. (Staff report # 10-152)

Staff presentation by Deanna Chow, Associate Planner

City Attorney B. McClure provided information on what is before the City Council and that they are sitting in a quasi judicial manner. He further explained what is required under the law and that the actual applicant is not relevant. They must base their decision on necessity. Competition is not a valid reason for denial. He explained the course of action from the respective parties based on the decision. If upheld, the applicant could file a Writ proceeding challenging the denial based on the facts not fitting the action.

Appellant: Maureen Hogan

Gave a PowerPoint presentation (PowerPoint)

M. Hogan reviewed the vote of the Planning Commission noting that if one additional commissioner would have voted in the negative, the permit would have been denied. The findings of the necessity / convenient and not detrimental to the community had not been met. There are three licenses allowed in a census tract and there are currently five existing. She expressed that this census tract is an overconcentration of liquor stores. M. Hogan described how Menlo Park is already “well served” and that BevMo! would cause a detriment to the community. The current family-oriented, charming, upscale community-centric image of Menlo Park is at stake. There is a strong sentiment among Menlo Park residents who do not want BevMo. There have been over 3,000 correspondence and petitions from area residents in opposition. Allowing the permit would be harmful to existing wine/liquor businesses in Menlo Park, many of which are locally owned. The statement that the city needs the sales tax is not valid. The net job impact should be considered. By the time the City conducts a review after three years, it will be too late to make changes. There are ramifications on multiple levels, and these types of applications should be reviewed in detail.

She asked those opposed to BevMo to stand. She requested the Council to deny the Use Permit.

Applicant: Mr. Sealy (PowerPoint)

Mr. Sealy discussed the location of the permit request (700 El Camino Real), which came at the suggestion of the City Council in 2006.

BevMo! will fill a space on El Camino Real (ECR) that has been vacant for over a year. Most of the correspondence sent to the City was one business over another. The Planning Commission did, after discussion, approve the permit. Staff has recommended upholding the permit.

BevMo! combines the selection with friendly service, and the educational wine classes and testing. BevMo! offers over 2,000 non-alcoholic items including glassware and cheeses. They offer a store location that is more convenient for Menlo Park resident and that will support public convenience. An independent study was done showing that there is an under service in Menlo Park and Palo Alto. They have \$1.7 million in sales coming from Palo Alto and Menlo Park residents at the Redwood City store. BevMo! carries unique items that are otherwise not available in Menlo Park.

If approval is upheld, they request one change to condition 8b in that they offer beer and wine tasting not just wine.

Public Comment:

- The following members of the public spoke in favor of upholding the decision of the Planning Commission granting the Use Permit
 - Adam Morey (handout)
 - David Wokenberg
 - Read Redwine
 - Amy Herman
 - Matt Francois
 - Andrew Robell
 - Martha Morey
 - Scott J. Axe
 - Adam Ono
 - Christian Bronstein
 - Michael Lyons
 - Robert Mancuso
 - Judy Morey
 - Carel Veenhuyzen
 - Matt Ackerman
 - Larry Dahl
 - Michael Stoner
 - Alan Jackson
 - Christine Williams
 - LeAnna Levenson
 - Keith Wallenberg
 - John Ward
 - Brad Smith

- The following members of the public spoke against the Use Permit
 - Jeff Hewitt
 - Mike Precobb
 - James Grogan
 - James Desmet-Bacon
 - Daniela Turner
 - Jimm and Jeff Pollock
 - Sarah Steppe
 - Mike Wyatt
 - Patrick Brandin
 - William Miller
 - Janet Benson
 - Clark Kepler
 - Kathleen Daly
 - Dan Beltramo Jr.
 - Matt Hogan
 - Katie Ferrick
 - Harry Bird
 - Rhoda Alexander

- Steve Cohen
- Barbara Goodrich
- Nick Sharma

Action: Motion and second (Boyle/Fergusson) to close the Public Hearing passed unanimously.

Council Comments:

Kelly Fergusson

- K. Fergusson stated that she cannot support the permit due to the lack of necessity and convenience.

Heyward Robinson

- H. Robinson stated that he cannot support the permit due to the lack of necessity and convenience.

John Boyle

- The arguments on both sides have been articulate.
- Staff has advised that this shopping center is a planned unit development and most businesses do not require a Use Permit.
- The competitiveness of the business should not be considered in making a decision.
- The Council should focus on the convenience and necessity factor.
- J. Boyle believes it comes down to whether this is an appropriate use for the space, and not who the applicant is.
 - It fits right in with the businesses that are currently in that shopping center or across the street
- It is convenient on at least two cases.
 - They offer many items not offered by other businesses in Menlo Park
 - Many speakers stated they drive to Redwood City; therefore it would be a convenience for residents.
- BevMo! will create jobs and revenue in Menlo Park.
- J. Boyle stated he supports the Planning Commission and staff recommendation to deny the appeal and approve the Use Permit to BevMo!

Andy Cohen

- Measuring convenience in terms of anecdotal information is inappropriate; it is not about how many people showed up to the Council meeting or sent emails. It is not about popularity, it is about a statutory decision.
- This is not about saying free competition is something that the Council gets to overrule.
- In some theoretical sense, can it be found that it is convenient to have a BevMo! In Menlo Park
- A. Cohen is not convinced that the City could do any better if this use is excluded from this use at this location
- A. Cohen is not convinced that competition is bad for MP
- A. Cohen is not convinced that Beltramos will suffer
- A. Cohen is leaning toward supporting the approval of the Use Permit

Rich Cline

- Number of issues brought up
- The impact Beltramos has on the community is positive, but it is irrelevant for the decision
- He cannot disagree with the notion of having enough liquor stores in town

- He has a concern about the impact to the village charm
- It is premature to discuss the downtown plan since it is not yet complete
- Santa Cruz Avenue was not the location for this business
- There is clearly no necessity
- Convenience is a nuance to him and it is a mish-mash of terminology
- He believes that convenience can be a lot of things; not just what is in the store but where it is located
- This is a specialty store and has an inventory with items not carried elsewhere
- Location, easy parking, easy entry and exit are conveniences

Action: Motion and second (Boyle/Cohen) to deny the appeal and adopt the findings as listed in appendix A of the staff report with the modification to allow for tastings to include beer.

Friendly amendment suggested by Robinson: To require BevMo! to remove the single serve spirit items from the checkout area. The amendment was accepted.

Friendly amendment suggested by Cohen: Schedule a review in 2 years from the opening of the store as originally suggested by the Planning Commission and that BevMo! avoid any marketing that would not be appreciated in Menlo Park. The amendment was accepted.

Final Action: Motion and second (Boyle/Cohen) to deny the appeal and adopt the findings as listed in appendix A of the staff report and subject to the following modifications passes 3-2 (Fergusson/Robinson dissenting):

- Item 7b revised to provide for Planning Commission review two years from the date of store opening.
- Item 8b revised to permit beer and wine tastings as described.
- Add condition 8d: Mini-bottles of alcohol shall be kept in locked display cabinets or behind the counter and not available to customers in bins, tubs or boxes at checkout.

The Council recessed at 10:57 p.m. and reconvened at 11:06 p.m.

F. REGULAR BUSINESS

1. Adoption of a Resolution: a) Authorizing a budgetary transfer of \$1,465,000 of Rec-in-Lieu funds from the Kelly Park Project to fund the Gymnastics Center Project, b) Authorizing a budgetary transfer of \$1,090,000 of Measure T funds from the Gymnastics Center to fund the Recreation Center Renovation and Addition Project, c) Appropriating \$660,000 from the General Fund CIP fund to complete the funding for the Recreation Center Renovation and Addition Project, d) Determining that the Recreation Center Renovation and Addition Project is consistent with the City's General Plan; and adopting a Resolution as the City of Menlo Park Redevelopment Agency appropriating \$1,465,000 to complete agency funding for the Kelly Park Project (*Staff report # 10-154*)

Staff presentation by Kent Steffens, Deputy City Manager

Action: Motion and second (Fergusson/Robinson) to approve **Resolution 5966** authorizing a budgetary transfer of \$1,465,000 of Rec-in-Lieu funds from the Kelly Park Project to fund the Gymnastics Center Project; and authorizing a budget transfer in the amount of \$1,090,000 from Measure T funds from the Gymnastics Center to fund the Recreation Center Renovation and Addition Project; and appropriating \$660,000 from the General Fund CIP Reserve to complete

the funding for the Recreation Center Renovation and Addition Project; and determining that the Recreation Center Renovation and Addition Project is consistent with the City's General Plan and to look at the storage space as well as adding AV equipment passes unanimously.

Action: Motion and second (Fergusson/Robinson) to adopt **CDA Resolution No. 307** appropriating \$1,465,000 to complete agency funding for the Kelly Park Project passes unanimously.

2. Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item – **None**

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION

NOTE: The request to have this item reconsidered was withdrawn by Council Member Cohen and therefore was not heard at the meeting.

1. Consideration and possible action requested from Council Member Cohen for reconsideration of Council action regarding a determination on an appeal of the Environmental Quality Commission's denial of a heritage tree removal permit at 240 University Drive (*Attachment*)

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

1. Report from the City Council Subcommittee on High Speed Rail

Note: Councilmember Cohen and City Attorney McClure are recused from this item and left the Council chambers at 11:44 p.m.

K. PUBLIC COMMENT #2 – None

L. ADJOURNMENT – 11:54 p.m.



Margaret S. Roberts, MMC
City Clerk

Minutes accepted at the Council meeting of December 14, 2010